

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter-of the Appeal of)
GEORGE HARROLD, JR., DECEASED,)
AND DOROTHY HARROLD)

For Appellants: Dorothy Harrold, in pro. per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to ~~section 19057~~, subdivision (a), of the Revenue and Taxation Code^{1/} from the action of the Franchise Tax Board in denying the claim of George, Jr., Deceased, and Dorothy Harrold for refund of personal income tax in the amount of \$66.00 for the year 1973.

1/ All statutory references are to the Revenue and Taxation Code.

Appeal of George Harrold, Jr. ,Dec.,
and Dorothy Harrold

The sole issue for determination is whether the claim for refund was barred by the statute of limitations.

George Harrold, Jr. died on August 15, 1973. On September 2, 1978, his surviving spouse, appellant Dorothy Harrold, filed a joint state income tax return for the year 1973, pursuant to the provisions of subdivision (c) of section 18402. The tax return presented the appellants' statement of income, deductions, and credits for 1973, indicated that prepayment credits exceeded tax liability by the amount of \$66.00, and included a request that this amount be refunded. The prepayment credits resulted entirely from wages withheld in 1973.

Respondent properly treated the return as a claim for refund but denied the claim on the ground that it was not filed within statutory time limitations. Subsequently, this appeal was filed. The general statute of limitations for credits or refund claims is set forth in section 19053, which provides in pertinent part:

No credit or refund shall be allowed or made after four years from the last day **prescribed for filing the return or after one** year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim **therefor** is filed by the taxpayer, or unless before the expiration of such period the Franchise Tax Board allows a credit, makes a refund, issues a notice of proposed overpayment, or certifies such overpayment to the State Board of Control for approval of the refunding thereof.

Returns made on the basis of the calendar year are to be filed on or before the fifteenth day of April following the close of the taxable year. (§ 18432.) Taxes withheld from wages are deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit. (§ 18551. 1.) Thus, appellants' return of September 2, 1978, which constituted a refund claim, was filed more than four years from the last day prescribed for filing the return and more than one year after the date the monies were deemed paid.

Appeal of George Harrold, Jr., Dec.,
and Dorothy Harrold

Appellant's only argument on appeal is that her claim should not have been denied because her accountant delayed in preparing it and did not advise her concerning time limits in filing such claims.

While we sympathize with appellant, her lack of knowledge with respect to the statutory time periods for filing refund claims clearly does not immunize her from such requirements. (Appeal of Tolbert D. Spradlin, Cal. St. Rd. of Equal. , Jan. 7, 1975; Appeal of E. C. and P. M. Braeunig, Cal. St. Rd. of Equal., Feb. 18, 1970.) In addition, her alleged reliance upon an agent will not excuse appellant's lack of compliance with the statutory requirement. Therefore, we have no choice but to follow the clear mandate of section 19053, and to declare that the claim for refund was barred by the statute of limitations. (See also Appeal of Michael and Antha L. Avril, Cal. St. Rd. of Equal. , Aug. 15, 1978; Appeal of Dwain G. and Mary M. Rice, Cal. St. Rd. of Equal. , Aug. 7, 1967.)

Accordingly, we must sustain respondent's action.

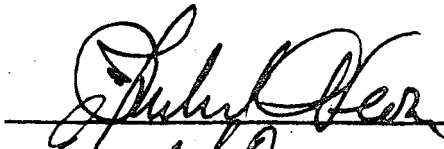
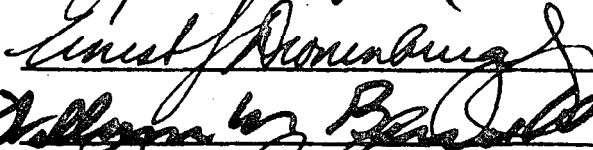
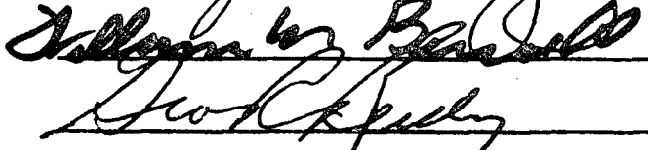
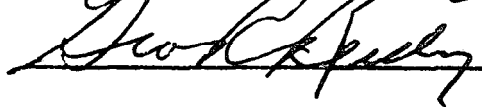
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of George Harrold, Jr., Dec.,
and Dorothy Harrold

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,
pursuant to section 19060 of the Revenue and Taxation Code, that
the action of the Franchise Tax Board in denying the claim of
George, Jr. , Deceased, and Dorothy Harrold for refund of
personal income tax in the amount of \$66.00 for the year 1973,
be and the same is hereby sustained.

Done at Sacramento, California, this 30th day
of June , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member